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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CONSTRUCTION LABORERS
TRUST FUNDS FOR SOUTHERN
CALIFORNIA ADMINISTRATIVE
COMPANY, a Delaware limited
liability company,

Plaintiff,

v.

G&Y GENERAL CONTRACTOR,
INC., a California corporation,

Defendant.

CASE NO.:

COMPLAINT FOR:

- 1. MONETARY DAMAGES DUE TO
EMPLOYEE BENEFIT PLANS**
- 2. SPECIFIC PERFORMANCE OF
OBLIGATION TO PRODUCE
RECORDS FOR AUDIT**

[29 U.S.C. §§ 185, 1132(a)(3),
1132(g)(2) and 1145]

Plaintiff, Construction Laborers Trust Funds for Southern California
Administrative Company, a Delaware limited liability company, alleges:

JURISDICTION AND VENUE

1. This action is brought by a fiduciary administrator on behalf of
employee benefit plans against an employer to enforce of the terms of collective

1 bargaining agreements and plan trust agreements to (a) recover fringe benefit
 2 contributions and related damages due by the employer on behalf of its employees
 3 (Claim 1) and (b) compel the employer to produce records for audit to determine if
 4 additional amounts are due (Claim 2). This Court has jurisdiction pursuant to
 5 sections 502(g)(2) and 515 of the Employee Retirement Income Security Act
 6 (ERISA), 29 U.S.C. §§ 1132(g)(2) and 1145; ERISA section 502(a)(3), 29 U.S.C.
 7 § 1132(a)(3); and section 301 of the Labor Management Relations Act (LMRA),
 8 29 U.S.C. § 185. Pursuant to ERISA section 502(e)(2), 29 U.S.C. § 1132(e)(2),
 9 venue is proper in this district for each of the following reasons: the plans are
 10 administered in this district; the employer's performance and breach took place in
 11 this district; and the employer resides or may be found in this district.

12 13 **PARTIES**

14
 15 2. Plaintiff ("CLTF") is an administrator of, agent for collection for, a
 16 fiduciary to, and brings this action on behalf of the following employee benefit
 17 plans: Laborers Health and Welfare Trust Fund for Southern California;
 18 Construction Laborers Pension Trust for Southern California; Laborers Annuity Plan
 19 for Southern California; Laborers Vacation, Holiday and Sick Pay Trust Fund;
 20 Laborers Training and Re-Training Trust Fund for Southern California; Fund for
 21 Construction Industry Advancement; Center for Contract Compliance; Laborers
 22 Contract Administration Trust Fund for Southern California; Laborers' Trusts
 23 Administrative Trust Fund for Southern California; and Southern California
 24 Partnership for Jobs Trust Fund (collectively "Trust Funds"). The Trust Funds are
 25 express trusts created by written agreements; employee benefit plans within the
 26 meaning of ERISA section 3(3), 29 U.S.C. § 1002(3); and multi-employer plans
 27 within the meaning of ERISA section 3(37)(A), 29 U.S.C. § 1002(37)(A). The Trust
 28 Funds exist pursuant to ERISA and LMRA section 302, 29 U.S.C. § 186. CLTF and

1 the Trust Funds' principal places of business are in the County of Los Angeles, State
2 of California.

3
4 3. CLTF is informed and believes, and on that basis alleges, that defendant
5 G&Y General Contractor, Inc. ("Employer") is a corporation organized and existing
6 under the laws of the State of California; has a principal place of business in the City
7 of Porter Ranch, County of Los Angeles, State of California; and does, or at all
8 relevant times did, business in the State of California as a construction contractor in
9 an industry affecting interstate commerce.

10
11 **AGREEMENTS**
12

13 4. Various public entities in Southern California have entered into project
14 labor agreements (also known a project stabilization agreements, continuity of work
15 agreements and community benefits agreements) with unions and employer
16 associations establishing terms and conditions of work on public works projects. In
17 each case, by, and as a condition of, performing work on such a project, contractors
18 must abide by the terms of the applicable project labor agreement, including terms
19 related to the payment of employee wages and fringe benefits. The Employer
20 performed work on certain such public works projects, including at least those of the
21 Lynwood Unified School District (governed by the Lynwood Unified School District
22 Continuity of Work Agreement); the Norwalk-La Mirada Unified School District
23 (governed by the Norwalk-La Mirada Unified School District Community Benefits
24 Agreement); the Mountain View School District (governed by the Mountain View
25 School District Project Labor Agreement); and the Azusa Unified School District
26 (governed by the Azusa Unified School District Project Labor Agreement). Upon
27 information and belief, CLTF further alleges that the Employer might have worked
28 on other project labor agreements containing terms and conditions related to the

1 payment of employee wages and fringe benefits, including but not limited to one of
2 the Pasadena Unified School District known as the Pasadena Unified School District
3 Continuity of Work Agreement. The project labor agreements governing work
4 performed by the Employer are referred to hereinafter collectively as the "Project
5 Labor Agreements." The Project Labor Agreements incorporate by reference the
6 collective bargaining agreements of various labor unions that are signatory to them,
7 including certain collective bargaining agreements of the Southern California
8 District Council of Laborers and its affiliated local Unions (collectively "Laborers
9 Union") known as the Construction Master Labor Agreements. The Construction
10 Master Labor Agreements include but are not limited to one known as the Southern
11 California Master Labor Agreement.

12
13 5. Pursuant to the Construction Master Labor Agreements, employers
14 become bound to the terms and conditions of the various trust agreements of the
15 Trust Funds ("Trust Agreements").

16
17 6. The Employer is, and at all relevant times was, also bound to certain
18 subscription agreements ("Subscription Agreements"). Each Subscription
19 Agreement relates to a specific construction project that is identified in it and
20 requires the Employer to pay fringe benefit contributions to the Trust Funds on
21 behalf of the Employer's apprentice employees who perform work on the project.
22 Such subscription agreements include but are not limited to ones for the Employer's
23 work on: (a) a project of the Santa Monica Community College District known as
24 the *Santa Monica Community College Main Campus – Classroom & Building*
25 *Remodel* project; (b) a project of the Simi Valley Unified School District known as
26 the *Sinaloa MS Shade Structures* project; (c) a project of the Santa Monica College
27 known as the *SMC Early Childhood Education Center* project; (d) a project of the
28 Norwalk-La Mirada Unified School District known as the *Los Alisos Middle School*

1 – *Portable Classroom Building* project; (e) a project of the Santa Monica-Malibu
2 Unified School District known as the *Olympic High School* project; and (f) a project
3 of the Santa Monica Unified School District known as the *Santa Monica High*
4 *School – Samohi Utility Building Alteration* project.

5
6 7. When referenced collectively hereinafter, the Project Labor Agreements,
7 Construction Master Labor Agreements, Trust Agreements and Subscription
8 Agreements are referred to as "the Agreements."

9
10 8. The Agreements require employers, including the Employer, to submit
11 monthly fringe benefit contributions ("Monthly Contributions") to the Trust Funds
12 for all hours worked by (or paid for) their employees who perform work covered by
13 the Agreements ("Covered Work").

14
15 9. The Agreements require employers, including the Employer, to submit
16 to the Trust Funds, with their Monthly Contributions, monthly reports, itemized by
17 project, listing the names of their employees who performed Covered Work, their
18 Social Security numbers, the hours of work performed by (or paid for) each, and the
19 resulting Monthly Contributions due for them ("Monthly Reports"). The Trust
20 Funds rely on Monthly Reports – and the accuracy of those reports – to determine
21 the amount of Monthly Contributions due to the Trust Funds by employers and the
22 credit toward fringe benefits to be allocated to their employees.

23
24 10. The Agreements require employers, including the Employer, to pay
25 interest on delinquency Monthly Contributions. Under the Construction Master
26 Labor Agreements and Trust Agreements, the trustees of the Trust Funds have the
27 authority to set the interest rate and have set it at five percent (5%) above the prime
28 rate set by the Federal Reserve Board of San Francisco, California. That is the rate

1 applicable to work under the Project Labor Agreements (which incorporate the
2 Construction Master Labor Agreements and Trust Agreements by reference). Each
3 Subscription Agreement requires payment of interest at 10% on delinquent Monthly
4 Contributions due for work on the project to which it applies.

5
6 11. The Construction Master Labor Agreements and Trust Agreements (and
7 thus also the Project Labor Agreements, which incorporate them by reference)
8 require employers, including the Employer, to pay, for each Trust Funds separately,
9 liquidated damages for each month of delinquent Monthly Contributions or Monthly
10 Reports in the amount of twenty percent (20%) of the delinquent Monthly
11 Contributions due to the Trust Fund or \$25, whichever is greater. In addition, the
12 Construction Master Labor Agreements and Trust Agreements – and thus also the
13 Project Labor Agreements – require employers to pay fees for the submission of
14 dishonored checks.

15
16 12. The failure of employers to pay Monthly Contributions when due causes
17 damages to the Trust Funds and its participants beyond the value of the unpaid
18 Monthly Contributions, which are difficult to quantify. Apart from the fees and
19 costs incurred in litigation, the harm caused includes, but is not limited to, the
20 administrative costs of processing and collecting delinquencies, the costs of
21 adjusting benefit credits and notifying participants, the additional burden placed on
22 contractors who faithfully pay their contributions, and the burden upon participants
23 and beneficiaries who may be unable to qualify for benefits they may have otherwise
24 been entitled to had it not been for the delinquency of their employer. The liquidated
25 damages provision of the Agreements was meant to compensate for the loss to the
26 Trust Funds, which is incurred even if the Monthly Contributions for a given month
27 are later paid. It is based on the Trust Funds' ratio of collection costs over amounts
28 collected, which are regularly reported to the Trust Funds' trustees.

1 13. The Construction Master Labor Agreements require employers,
2 including the Employer, to subcontract Covered Work only to entities that are
3 signatory to a Construction Master Labor Agreement applicable to the work
4 performed. If an employer subcontracts Covered Work to a non-signatory entity, the
5 employer becomes liable to the Trust Funds in an amount equal to the Monthly
6 Contributions that would have been due if the entity had been signatory (plus
7 interest, liquidated damages and audit fees thereon).

8
9 14. Under the terms of the Construction Master Labor Agreements,
10 employers agree not to subcontract Covered Work to entities that are delinquent to
11 the Trust Funds. If an employer subcontracts Covered Work to such an entity the
12 employer becomes under the terms of the Agreements liable to the Trust Funds for
13 the Monthly Contributions due by the subcontractor and any lower-tier
14 subcontractors.

15
16 15. The Agreements provide the Trust Funds with authority to examine the
17 payroll and business records of employers, including the Employer, to determine
18 whether they have reported all hours worked by (or paid for) their employees who
19 perform Covered Work, and whether they have paid the appropriate Monthly
20 Contributions and other amounts due by them to the Trust Funds. The Construction
21 Master Labor Agreements and Trust Agreements further provide that employers,
22 including the Employer, must maintain records sufficient for the Trust Funds to
23 verify proper Monthly Reporting, and, where there has been inaccurate Monthly
24 Reporting, to determine the additional amounts due, and that the Employer must pay
25 the Trust Funds' audit fees if it is delinquent to the Trust Funds. The Trust Funds
26 have delegated the authority to perform such audits to CLTF.

27
28 16. The Construction Master Labor Agreements and Trust Agreements

1 require employers, including the Employer, to pay the Trust Funds' attorneys' fees
 2 and costs of litigation to enforce the Agreements' foregoing terms, including the
 3 Monthly Contribution, Monthly Reporting, subcontracting and audit provisions.

4 5 **FIRST CLAIM FOR RELIEF**

6 **For Monetary Damages Due to Employee Benefit Plans**

7 [29 U.S.C. §§ 185, 1132(g)(2) and 1145]
 8

9 17. CLTF repeats, realleges and incorporates by reference each and every
 10 allegation contained in paragraphs 1 through 16 above as if fully set forth here.
 11

12 18. The Employer has failed to timely submit Monthly Contributions due by
 13 it to the Trust Funds. Pursuant to the Agreements and ERISA sections 502(g)(2) and
 14 515, 29 U.S.C. §§ 1132(g)(2) and 1145, the Employer owes the Trust Funds a
 15 known amount of \$46,816.92 for unpaid or late-paid Monthly Contributions and
 16 related damages (and/or late-submitted Monthly Reports) for some or all of the
 17 months of January 2018 through April 2022 ("Known Delinquency"). The Known
 18 Delinquency consists of: \$10,878.84 in unpaid Monthly Contributions; \$3,964.53 in
 19 interest (through November 14, 2022); \$29,473.55 in liquidated damages; and
 20 \$2,500.00 in audit fees.
 21

22 19. The portions of the Known Delinquency due for months prior to
 23 December 2019 are known to be due based on an audit of the Employer conducted
 24 by CLTF ("Audit"). The portions of the Known Delinquency due for months prior
 25 to December 2019 were not known to CLTF or the Trust Funds prior discovery
 26 through the Audit. CLTF's initial request to the Employer for it to produce records
 27 for the Audit was made in April or May 2018. Insufficient records were produced
 28 by the Employer for the Audit. Additional records were produced by the Employer

1 in January 2020, after which CLTF determined amounts due by the Employer based
 2 on the limited records produced and the Audit was initially billed to the Employer in
 3 April 2020.

4
 5 20. CLTF will establish by proof at the time of trial or through dispositive
 6 motion the Known Delinquency and any additional amounts determined to be due to
 7 the Trust Funds by the Employer, including any additional Monthly Contributions,
 8 interest, liquidated damages, audit fees, fees for the submission of checks not
 9 honored by the bank upon which they were drawn, attorneys' fees and costs, and
 10 amounts owed as a result of work performed by subcontractors of the Employer (or
 11 lower-tier subcontractors). If deemed necessary by the Court, CLTF will amend its
 12 complaint to add any additional amounts determined to be due. Any and all
 13 conditions to the Employer's obligations under the Agreements to pay the Known
 14 Delinquency and any additional amounts due under the Agreements to the Trust
 15 Funds have been met.

16
 17 21. Under the terms of the Agreements and ERISA section 502(g)(2)(D),
 18 29 U.S.C. § 1132(g)(2)(D), CLTF is entitled to an award of its attorneys' fees and
 19 costs.

20 21 **SECOND CLAIM FOR RELIEF**

22 **For Specific Performance of Obligation to Produce Records for Audit**

23 [29 U.S.C. §§ 1132(a)(3) and 1132(g)(2)(E)]
 24

25 22. CLTF repeats, realleges and incorporates by reference each and every
 26 allegation contained in paragraphs 1 through 21 above as if fully set forth here.
 27

28 23. CLTF requests that the Court exercise its authority under ERISA

1 sections 502(a)(3) and (g)(2)(E), 29 U.S.C. §§ 1132(a)(3) and (g)(2)(E) to order the
2 Employer to comply with its obligation under the Agreements and ERISA to fully
3 produce its books and records in order for CLTF to complete an audit to determine if
4 additional amounts are due.

5
6 24. An award of attorneys' fees and costs is provided for by Agreements and
7 under ERISA sections 502(g)(1) and/or (g)(2), 29 U.S.C. § 1132(g)(1) and/or (g)(2).
8

9 **WHEREFORE, CLTF prays for judgment as follows:**

10
11 ON CLTF'S FIRST CLAIM FOR RELIEF

12 [For Monetary Damages Due to Employee Benefit Plans]

13
14 A. For \$10,878.84 in unpaid Monthly Contributions, as required by the
15 Agreements and 29 U.S.C. § 1132(g)(2)(A).
16

17 B. For \$3,964.53 in interest through November 14, 2022 on unpaid or late
18 paid Monthly Contributions at the rate of five percent above the variable prime rate
19 set by the Federal Reserve Board of San Francisco, California, plus such additional
20 interest that has or does hereafter accrue from November 14, 2022, as required by
21 the Agreements and 29 U.S.C. § 1132(g)(2)(B).
22

23 C. For \$29,473.55 in liquidated damages for unpaid and late-paid Monthly
24 Contributions at, for each of the Trust Funds separately, the greater of 20% or \$25
25 (except with respect to the Laborers Contract Administration Trust Fund for
26 Southern California, for which liquidated damages are sought at the greater 10% or
27 \$20), as required by the Agreements and 29 U.S.C. § 1132(g)(2)(C).
28

1 D. For \$2,500.00 in audit fees, as required by the Agreements and
2 29 U.S.C. § 1132(g)(2)(E).

3
4 E. For, according to proof, any additional Monthly Contributions, interest,
5 liquidated damages, audit fees, insufficient funds check fees, and amounts owed as a
6 result work performed by any subcontractors of the Employer (or lower-tier
7 subcontractors) determined to be due, pursuant to the Agreements and 29 U.S.C.
8 §§ 1132(g)(2) and 1145.

9
10 F. For reasonable attorneys' fees and costs of suit, as required by the
11 Agreements and 29 U.S.C. § 1132(g)(2)(D).

12
13 G. For such other relief that this Court deems appropriate, pursuant to any
14 authority of the Court, including but not limited to the authority established by
15 29 U.S.C. §§ 1132(g)(2)(E) and 1132(a)(3).

16
17 ON CLTF'S SECOND CLAIM FOR RELIEF

18 [For Specific Performance of Obligation to Produce Records for Audit]

19
20 A. For the issuance of injunctive relief pursuant to the Agreements and
21 29 U.S.C. §§ 1132(g)(2)(E) and/or 1132(a)(3) ordering the Employer and its
22 managing officers, managing employees, agents and successors, as well as all those
23 in active concert or participation with any one or more of them, to submit to an audit
24 of the Employer's records from at least September 1, 2015 through the date of the
25 audit, to fully cooperate with CLTF with respect to the audit in order for CLTF to
26 determine the total amount due to the Trust Funds by the Employer, and,
27 specifically, to produce to CLTF the following payroll and business records – and
28 any other records determined by CLTF to be necessary to conduct a full audit – for

1 inspection, examination and copying:

2
3 A.1. All of the Employer's payroll and employee records, as well as
4 any other records that might be relevant to a determination of the work performed by
5 the Employer, its employees, its subcontractors, its lower-tier subcontractors and the
6 employees of the Employer's subcontractors and lower-tier subcontractors, including
7 but not limited to payroll journals, employee earnings records, certified payroll
8 records, payroll check books and stubs, cancelled payroll checks, payroll time cards
9 and state and federal tax returns (and all other state and federal tax records), as well
10 as labor distribution journals and any other records that might be relevant to an
11 identification of the employees who performed work for the Employer, its
12 subcontractors or lower-tier subcontractors, or which might be relevant to a
13 determination of the projects on which the Employer, its employees, its
14 subcontractors, lower-tier subcontractors or the employees of its subcontractors or
15 lower-tier subcontractors performed work, including any records that provide the
16 names, addresses, Social Security numbers, job classification or the number of hours
17 worked by any one or more employee;

18
19 A.2. All of the Employer's job files for each contract, project or job on
20 which the Employer, its employees, its subcontractors, its lower-tier subcontractors
21 or the employees of its subcontractors or lower-tier subcontractors worked, including
22 but not limited to all correspondence, agreements and contracts between the
23 Employer and any general contractor, subcontractor, owner, builder or developer, as
24 well as all field records, job records, notices, project logs, supervisors' diaries and
25 notes, employees' diaries and notes, memoranda, releases and any other records that
26 relate to the supervision of the Employer's employees, its subcontractors, its lower-
27 tier subcontractors or the employees of its subcontractors and lower-tier
28 subcontractors, or the projects on which the Employer, its employees, its

1 subcontractors, its lower-tier subcontractors or the employees of its subcontractors or
2 lower-tier subcontractors performed work;

3
4 A.3. All of the Employer's records related to cash receipts, including
5 but not limited to the Employer's cash receipts journals, accounts receivable
6 journals, accounts receivable subsidiary ledgers and billing invoices for all contracts,
7 projects and jobs on which the Employer, its employees, its subcontractors, its
8 lower-tier subcontractors or the employees of its subcontractors or lower-tier
9 subcontractors performed work;

10
11 A.4. All of the Employer's bank statements, including but not limited
12 to those for all checking, savings and investment accounts;

13
14 A.5. All of the Employer's records related to disbursements, including
15 but not limited to vendors' invoices, cash disbursement journals, accounts payable
16 journals, check registers and all other records which indicate disbursements;

17
18 A.6. All collective bargaining agreements between the Employer and
19 any trade union, and all records of contributions by the Employer to any trade union
20 trust fund; and

21
22 A.7. All records related to the formation, licensing, renewal or
23 operation of the Employer.

24
25 B. For reasonable attorneys' fees and costs of suit, as required by the
26 Agreements and provided for under 29 U.S.C. § 1132(g)(1) and/or (g)(2).

27
28 C. For such other relief that this Court deems appropriate, pursuant to any

